

JURY TRIAL DEMANDED

Plaintiff submits that the Summary Judgment Requirements embodied in Appendix 11, ECM Doc. 2, is dispositive of the Defendant's Motion to Exclude.

Assuming that Appendix II means something other than what it unambiguously says, it worth noting that the Defendant's Brief in Support of its Motion for Summary Judgment ignored Appendix II's requirement that "statement[s] of allegedly undisputed facts [must b] set out in separately numbered paragraphs." ECM No. 2, *Id.*, Section 1, Moving Party's Initial Statement of Facts, p. 16. Plaintiff raised no objection with the Court on this ground. If the City's Brief had complied with that mandatory provision, its initial brief would have substantially exceeded thirty-five pages.

When the City moved to file excess pages in its main brief, Plaintiff did not oppose. ECM No. 73, Defendant's Motion to File Excess Pages.

As was the City's prerogative, it chose to devote eight and a half (8 ½) of its thirty-five (35) pages to the allegedly disputed facts; and sixteen (6) pages to its Argument. ECM No. 77, Defendant's Brief in Support of Summary Judgment. ECF No. 73, Defendant's Summary Judgment Brief, pp. 1-9; pp. 9-35 Plaintiff, in turn chose to devote 13 ½ pages of her Response Brief to Additional Undisputed and /Disputed Facts, and 17 pages to Argument. ECM No. 81, Plaintiff's Response, pp. 5-18; 18-35.

Though the laborious fifteen drafts of Plaintiff's response brief – which sometime went up to as many as forty (4) pages, counsel eliminated several proposed facts and arguments to finally arrive at a 35-page brief, as required by Appendix II.

Thus, to the extent that the Defendant is entitled to make any argument in its Reply Brief, that argument should be included in the thirteen (13) pages to which Plaintiff consents, fully a third more pages than the ten (1) allowed by the Appendix II.

Of course, these equitable considerations are irrelevant in light of this Court's prohibition of arguments in Reply Briefs of Movants for Summary Judgment.

#### Conclusion

Plaintiff humbly requests that the Defendant's Partially Opposed Motion to Exclude its Response to Plaintiff Statement of Facts From the Page Count Limitations in its Reply Brief, ECM- No. 82, be denied for the simple reason that the said Response is the only subject which may be included in the Reply Brief. In any event, Defendant's Reply Brief should not exceed thirteen pages.

Respectfully submitted,

/s/U.W. Clemon

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**Certificate of Service**

I hereby certify that on this 6th day of February 2019, I have filed this Response to the Defendant's Motion for Summary Judgment with the Clerk of Court utilizing the CM-ECF filing system, which will provide electronic notification to all counsel of record.

/s/U.W. Clemon  
U.W. Clemon